

**Merchants Delivery and its alter ego Thursday Corporation and Department Store, Package, Grocery, Paper, House, Liquor and Meat Drivers and Helpers and Warehousemen Local Union No. 955 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 17-CA-10320**

15 September 1983

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

Upon a charge and an amended charge filed on 24 April and 1 June 1981,<sup>1</sup> respectively, by Department Store, Package, Grocery, Paper, House, Liquor and Meat Drivers and Helpers and Warehousemen Local Union No. 955 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and duly served on Respondent Merchants Delivery and its *alter ego* Thursday Corporation, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 17, issued a complaint and notice of hearing on 16 June 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5), (3), and (1), Section 8(d), and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges and complaint and notice of hearing before an administrative law judge were duly served on parties to this proceeding. Respondent failed to file an answer to the complaint.

On 7 December 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on 11 December 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and, therefore, the allegations in the Motion for Summary Judgment stand uncontroverted.

Upon the entire record in this proceeding, the Board makes the following:

### Ruling on the Motion for Summary Judgment

Rule 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

<sup>1</sup> The complaint alleges that the amended charge was filed on 29 May 1981. It is apparent from the face of the amended charge, however, that it was filed on 1 June 1981.

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." As noted above, Respondent has failed to file an answer to the complaint and has further failed to file a response to the Notice To Show Cause.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations in the complaint are deemed admitted and are found to be true, and we shall grant the General Counsel's Motion for Summary Judgment.<sup>2</sup>

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENT

Respondent Merchants, a corporation, was engaged in the interstate transportation of freight with a facility located at 1212 E. 19th Street, Kansas City, Missouri. In or about early April 1981, Respondent Merchants established Respondent Thursday as a subordinate instrument to, and a disguised continuation of, Respondent Merchants. At all times material herein, Respondent Merchants and Respondent Thursday have been affiliated business enterprises, owned, operated, managed, and controlled by the same individuals, and since on or about 13 April 1981, at which time Respondent Merchants essentially ceased all operations involved herein, Respondent Thursday has engaged in the same business operations, serving the same

<sup>2</sup> In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

customers, and utilizing the same assets and equipment as Respondent Merchants. During the 12-month period ending 31 December 1980, which period is representative of its operations during all times material herein, Respondent, in the course and conduct of furnishing transportation of freight in interstate commerce, derived gross revenue in excess of \$50,000. During the 12-month period ending 31 December 1980, Respondent, in the course and conduct of functioning as a link in the interstate transportation of freight, derived gross revenues in excess of \$50,000 and annually provides services valued in excess of \$50,000 to firms which satisfy the Board's direct jurisdictional standards.

We find, on the basis of the foregoing, and by virtue of the acts and conduct described above, that Respondent Merchants and Respondent Thursday are, and have been at all times material herein, *alter egos* and a single employer within the meaning of the Act, and that Respondent is and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. THE LABOR ORGANIZATION INVOLVED

Department Store, Package, Grocery, Paper, House, Liquor and Meat Drivers and Helpers and Warehousemen Local Union No. 955 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. The 8(a)(5) and (1) Violation

#### 1. The unit

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

All full-time and regular part-time employees in the following job classification—city delivery driver, pick-up shuttle, medical cartage driver, rural driver, gas man, dockman, tractor-trailer, lead mechanic, mechanic #1, mechanic #2, mechanic #3, paint and body man, excluding all office clericals, guards and supervisors as defined in the Act.

#### 2. The representative status of the Union

At all times material herein, the Union has been the designated exclusive collective-bargaining rep-

resentative of Respondent's employees in the unit described above, and the Union has been recognized as such representative by Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period April 1978 to 15 April 1981. We find that at all times material herein, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the employees in the unit described above for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

### 3. The refusal to bargain

During March and April 1981, Respondent and the Union met for the purpose of engaging in negotiations with respect to wages, hours, and other terms and conditions of employment of the employees in the unit described above, and during this period Respondent engaged in bargaining with the Union with no intention of reaching an agreement.

On or about 10 April 1981, without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as required by Section 8(d) of the Act, Respondent permanently closed its parcel delivery section and terminated all employees employed in the section. Since on or about 13 April 1981, Respondent unilaterally has failed and refused to recognize the Union as the exclusive collective-bargaining representative of its employees in the unit described above.<sup>3</sup>

Accordingly, we find that by the acts described above Respondent has failed and refused and is failing and refusing to bargain collectively and in good faith with the representative of its employees, and Respondent thereby has engaged in and is engaging in labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

### B. The 8(a)(3) and (1) Violations

As noted above, on or about 10 April 1981 Respondent permanently closed its parcel delivery section and terminated the employees employed in that section. Respondent engaged in the conduct described above because its employees joined, supported, or assisted the Union, and engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage its employees from engaging

<sup>3</sup> In view of these findings, we find it unnecessary to pass upon the complaint's alternative allegations that on 13 April 1981 Respondent Merchants unilaterally subcontracted unit work to Respondent Thursday and locked out its employees.

in said activities. The complaint alleges, and we find, that by such conduct Respondent additionally engaged in and has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5), (3), and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Thus we shall order Respondent to cease and desist from: (1) meeting with the Union for the purpose of negotiations with no intention to reach an agreement; (2) closing its parcel delivery section and terminating the employees in that section without notice to the Union and without affording the Union an opportunity to bargain with regard to such actions; and (3) refusing to recognize and bargain collectively in good faith with the Union. Since Respondent's closing of the parcel delivery section was discriminatorily motivated, we shall order Respondent to restore the *status quo ante* by ordering it to reopen its parcel delivery section, and to offer the terminated bargaining unit employees reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, and to make them whole, with interest, for any loss of earnings incurred as a result of Respondent's discrimination against them. Backpay and interest thereon shall be computed in the manner prescribed by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).<sup>4</sup> We also shall order Respondent to recognize and bargain in good faith with the Union, to bargain over its decision to close its parcel delivery section, and, if a decision is

reached to close the parcel delivery section, to bargain over the effects of such closing upon the unit employees.

#### CONCLUSIONS OF LAW

1. Merchants Delivery and its *alter ego* Thursday Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Department Store, Package, Grocery, Paper, House, Liquor and Meat Drivers and Helpers and Warehousemen Local Union No. 955 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act:

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees in the following job classifications—city delivery driver, pick-up shuttle, medical cartage driver, rural driver, gas man, dockman, tractor/trailer, lead mechanic, mechanic #1, mechanic #2, mechanic #3, paint and body man, excluding all office clericals, guards and supervisors as defined in the Act.

4. At all times material herein, the above-named labor organization has been, and now is, the exclusive representative of all the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By the acts described in section III,A, above, Respondent has refused to bargain in good faith with the above-named labor organization as the exclusive bargaining representative of all the employees in the appropriate unit described above, and thereby has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

6. By the acts described in section III,B, above, Respondent has discriminated in regard to hire or tenure of employment in order to discourage membership in or activities on behalf of a labor organization, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Re-

<sup>4</sup> The Board ordinarily orders a respondent to restore the *status quo ante* by reestablishing a discriminatorily closed operation unless the respondent can show that such a remedy would be "unduly burdensome." See *National Family Opinion, Inc.*, 246 NLRB 521 (1979). Respondent herein has failed to introduce any evidence showing that a reopening would be unduly burdensome and therefore has failed to meet its burden.

lations Board hereby orders that the Respondent, Merchants Delivery and its *alter ego* Thursday Corporation, Kansas City, Missouri, and Shawnee Mission, Kansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively concerning rates of pay, wages, and other terms and conditions of employment with Department Store, Package, Grocery, Paper, House, Liquor and Meat Drivers and Helpers and Warehousemen Local Union No. 955 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time employees in the following job classifications—city delivery driver, pick-up shuttle, medical cartage driver, rural driver, gas man, dockman, tractor/trailer, lead mechanic #1, mechanic #2, mechanic #3, paint and body man, excluding all office clericals, guards and supervisors as defined in the Act.

(b) Engaging in collective-bargaining negotiations with no intention of reaching an agreement.

(c) Unilaterally closing its parcel delivery section and terminating the employees in that section without giving prior notice to the Union or affording the Union an opportunity to negotiate and bargain regarding the decision to close and the effects of such closure upon the employees.

(d) Permanently closing its parcel delivery section and terminating the employees in that section in order to discourage membership in, or activities on behalf of, the Union or any other labor organization.

(e) In any other matter interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, recognize and bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, including its decision to close its parcel delivery section and ther effects of such closing upon the unit employees and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Reopen its parcel delivery section and offer the employees immediate and full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions,

without prejudice to their seniority or other rights and privileges and make them whole for their loss of earnings in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of contributions and any interest due under the terms of this Order.

(d) Post at its facilities in Kansas City, Missouri, and Shawnee Mission, Kansas, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>5</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to recognize or to bargain collectively concerning rates of pay, hours of employment, and other terms and conditions of employment with Department Store, Package, Grocery, Paper, House, Liquor and Meat Drivers and Helpers and Warehousemen Local Union No. 955 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or any other union selected as the exclusive bargaining representative of our employees. The bargaining unit is:

All full-time and regular part-time employees in the following job classifications—city delivery driver, pick-up shuttle, medical

cartage driver, rural driver, gas man, dockman, tractor/trailer, lead mechanic, mechanic #1, mechanic #2, mechanic #3, paint and body man, excluding all office clericals, guards and supervisors as defined in the Act.

WE WILL NOT engage in collective-bargaining negotiations without an intention of reaching an agreement.

WE WILL NOT unilaterally close our parcel delivery section and terminate our employees in that section without giving prior notice to the Union or affording the Union an opportunity to negotiate and bargain regarding the decision to close and the effects of such closure upon the employees.

WE WILL NOT permanently close our parcel delivery section and terminate our employees in that section in order to discourage membership in, or activities on behalf of, the Union or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exer-

cise of their rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, recognize and bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, our decision to close our parcel delivery section, and the effects of such closing upon the unit employees and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL reopen our parcel delivery section and offer the employees immediate and full reinstatement to their former positions, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges and make them whole, with interest, for their loss of earnings suffered as a result of our unilateral and discriminatory action.

MERCHANTS DELIVERY AND ITS  
ALTER EGO THURSDAY CORPORATION